

TENNESSEE

Sections 47-18-2501 and 47-18-2502 of the *Tennessee Code Annotated* govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to persons who either do business in Tennessee, or send unsolicited bulk email to Tennessee residents using the equipment of a Tennessee-based service provider;
- Require a sender to establish a mechanism by which a recipient can ask not to be contacted;
- Forbid sending email to persons who have asked not to receive it;
- Require a sender to put a label on the subject line of an unsolicited email containing advertising or sexually explicit material;
- Forbid the distribution of software designed to falsify the routing information of email; and
- Entitle a recipient or service provider to sue a violator for damages, attorney's fees, and costs.

In addition, portions of the Tennessee Commercial and Personal Computer Act of 2003 (Sections 39-14-601 through 39-14-606 of the *Tennessee Code Annotated*), a computer-crimes law, forbid a person to falsify the routing information of bulk commercial electronic mail; and entitle a recipient or service provider to sue a violator for damages, attorney's fees, and costs.

Tenn. Code Ann.

§39-14-601. Definitions Pertaining to Computer Crimes

As used in this part [§§39-14-601 - 39-14-606], unless the context otherwise requires:

- (1) "Access" means to approach, instruct, communicate, or connect with, store data in, retrieve or intercept data from, or otherwise make use of any resources of a computer, computer system, or computer network, or information exchanged from any communication between computers or authorized computer users and electronic, electromagnetic, electrochemical, acoustic, mechanical, or other means;
- (2) "Authorization" means any and all forms of consent, including both implicit and explicit consent;
- (3) "Computer" means a device or collection of devices, including its support devices, or peripheral equipment, or facilities, and the communication systems connected to it which can perform functions including, but not limited to, substantial computation, arithmetic or logical operations, information storage or retrieval operations, capable of being used with external files, one or more operations which contain computer programs, electronic instructions, allows for the input of data, and output data (such operations or communications can occur with or without intervention by a human operator during the processing of a job);
- (4) "Computer contaminants" means any set of computer instructions that are designed to modify or in any way alter, damage, destroy, or disrupt the proper operation of a computer system, or computer network without the intent or authorization of the owner of the information. They include, but are not limited to, a

group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network. Such contaminants may include viruses or worms, which terms shall have the following meanings:

(4)(A) "Virus" meaning a migrating program which, at least, attaches itself to the operating system of any computer it enters and can infect any other computer that has access to an "infected" computer; and

(4)(B) "Worm" meaning a computer program or virus that spreads and multiplies, eventually causing a computer to "crash" or cease functioning, but does not attach itself to the operating system of the computer it "infects";

(5) "Computer network" means a set of two or more computer systems that transmit data over communication circuits connecting them, and input/output devices including, but not limited to, display terminals and printers, which may also be connected to telecommunication facilities;

(6) "Computer program" means an ordered set of data that are coded instructions or statements that, when executed by a computer, cause the computer to process data;

(7) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system, or computer network whether imprinted or embodied in the computer in any manner or separate from it, including the supporting materials for the software and accompanying documentation;

(8) "Computer system" means a set of connected devices including a computer and other devices including, but not limited to, one or more of the following: data input, output, or storage devices, data communication circuits, and operating system computer programs that make the system capable of performing data processing tasks;

(9) "Data" means a representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared in a formalized manner, and is intended to be stored or processed, or is being stored or processed, or has been stored or processed in a computer, computer system, or computer network;

(10) "Electronic mail service provider" means any person who:

(10)(A) Is an intermediary in sending or receiving electronic mail; and

(10)(B) Provides to end-users of electronic mail services the ability to send or receive electronic mail;

(11) "Financial instrument" includes, but is not limited to, any check, cashier's check, draft, warrant, money order, certificate of deposit, negotiable instrument, letter of credit, bill of exchange, credit card, debit card, marketable security, or any computer system representation thereof;

(12) "Input" means data, facts, concepts, or instructions in a form appropriate for delivery to, or interpretation or processing by, a computer;

(13) "Intellectual property" includes data, which may be in any form including, but not

limited to, computer printouts, magnetic storage media, punched cards, or may be stored internally in the memory of a computer;

(14) "Local exchange company" includes telecommunications service providers as defined in §65-4-101; competing telecommunications service providers as such term is defined in §65-4-101; telephone cooperatives; cellular or other wireless telecommunications providers; and interactive computer service providers as defined in 47 U.S.C. §230(f).

(15) "Output" means data, facts, concepts or instructions produced or retrieved by computers from computers or computer memory storage devices;

(16) "Owner" means an owner or lessee of a computer or a computer network, or an owner, lessee or licensee of computer data, computer programs, or computer software;

(17) "Property" shall include:

(17)(A) Real property;

(17)(B) Computers and computer networks;

(17)(C) Financial instruments, computer data, computer programs, computer software, and all other personal property regardless of whether they are:

(17)(C)(I) Tangible or intangible;

(17)(C)(ii) In a format readable by humans or by a computer;

(17)(C)(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(17)(C)(iv) Located on any paper or in any device in which it is stored by a computer or by a human;

(18) "Services" includes, but is not limited to, the use of a computer, a computer system, a computer network, computer software, computer program, or data to perform tasks;

(19) "System hacker" means any person who knowingly accesses and without authorization alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network; and

(20) "To process" means to use a computer to put data through a systematic sequence of operations for the purpose of producing a specified result.

Created by Chapter 591, §1, Public Laws of 1989. Amended by Chapter 445, §1, Public Acts of 1993, and Chapter 317, §2, Public Acts of 2003, effective July 1, 2003.

§39-14-603. Crimes Involving Electronic Mail

(a) It is an offense for a person without authority to falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

(b) Transmission of electronic mail from an organization to its members shall not be deemed to be the transmission of unsolicited bulk electronic mail as prohibited by this section.

(c) Nothing in this section shall be construed to interfere with or prohibit terms or conditions

in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by or technical measures implemented by a Tennessee-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this section.

(d) As used in this section, "without authority" means a person uses a computer, a computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

(e) The transmission of electronic signals by a local exchange company to the extent that the local exchange company merely carries that transmission over its network shall not be deemed to be the transmission of unsolicited bulk electronic mail as prohibited by this act.

(f) A violation of this section shall be punished according to the damage to the property of another caused by the violation and shall be graded as provided in §39-14-105.

Created by Chapter 317, §§4 and 8, Public Acts of 2003, effective July 1, 2003.

§39-14-604. Recipient's or Service Provider's Remedies

(a) Any person whose property or person is injured by reason of a violation of any provision of this part may file a civil action and recover for any damages sustained and the costs of the civil action. Without limiting the generality of the term, "damages" shall include loss of profits.

(b) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited bulk electronic mail message transmitted in violation of this act, or \$1,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited bulk electronic mail over its computer network.

(c) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorney's fees and costs and may elect, in lieu of actual damages, to recover the greater of \$10 for each and every unsolicited bulk electronic mail message transmitted in violation of this part, or \$1,000 per day.

(d) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party. The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

Created by Chapter 317, §5, Public Acts of 2003, effective July 1, 2003.

§39-14-605. Venue for Prosecution of Computer Crimes

For the purposes of venue under the provisions of this part, any violation of this part shall be

considered to have been committed:

- (1) In any county in which any act was performed in furtherance of any transaction violating this part;
- (2) In any county in which any violator had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, computer software, computer program, or other material, objects, or items which were used in furtherance of the violation; and
- (3) In any county from which, to which or through which, any access to a computer, computer system, or computer network was made, whether by wire, electromagnetic waves, microwaves, or any other means of communication.

Created by Chapter 591, §1, Public Acts of 1989. Amended by Chapter 317, §6, Public Acts of 2003, effective July 1, 2003.

**§47-18-1602. Unsolicited Commercial Electronic Mail: Penalties and Remedies
[repealed]**

Created by Chapter 877, §2, Public Laws of 1990, effective September 1, 1990. Amended by Chapter 670, §1, Public Laws of 2000, effective July 1, 2000. Repealed by Chapter 15, §8, Public Laws of 2003, effective July 1, 2003.

§47-18-1604. Civil Penalty for Violators [repealed]

Created by Chapter 877, §4, Public Laws of 1990, effective September 1, 1990. Amended by Chapter 670, §3, Public Laws of 2000, effective July 1, 2000. Repealed by Chapter 15, §8, Public Acts of 2003, effective July 1, 2003.

§47-18-2501. Unsolicited and Fraudulent Commercial Electronic Mail

(a) No person or entity conducting business in this state shall send by e-mail or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity shall establish a toll-free telephone number or return e-mail address that a recipient of the unsolicited e-mailed documents may call to notify the sender not to e-mail the recipient any further unsolicited documents.

(b) *Repealed by Chapter 15, §3, Public Acts of 2003, effective July 1, 2003.*

(c) Upon notification by a recipient of the recipient's request not to receive any further unsolicited e-mailed documents, no person or entity conducting business in this state shall e-mail or cause to be e-mailed, any unsolicited documents to that recipient.

(d) A person or entity sending an unsolicited e-mail shall establish a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(e) If e-mail consists of unsolicited advertising material for the lease, sale, rental, gift offer

or other disposition of any realty, goods, services or extension of credit, the subject line of each and every message shall include "ADV:" as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age or older, the subject line of each and every message shall include "ADV:ADLT" as the first eight characters.

(f) In the case of unsolicited bulk e-mail, this section shall apply when the unsolicited e-mailed documents are delivered to a Tennessee resident via an electronic mail service provider's service or equipment located in this state. For these purposes, "electronic mail service provider" means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(g) It is unlawful for any person to sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which:

(g)(1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(g)(2) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

(g)(3) Is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(h) As used in this section, "e-mail" or "cause to be e-mailed" does not include or refer to the transmission of any documents by the telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(i)(1) Any person whose property or person is injured by reason of a violation of any provision of this section may sue therefor and recover for any damages sustained, and the costs of such suit. Without limiting the generality of the term, "damages" includes loss of profits.

(i)(2) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited bulk electronic mail message transmitted in violation of this section, or \$5,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmitted the unsolicited bulk electronic mail over its computer network.

(i)(3) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the greater of \$10 for each and every unsolicited bulk electronic mail message transmitted in violation of this section, or \$5,000 per day.

(i)(4) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade

secrets of any party.

(i)(5) The provisions of this subsection shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(j) The provisions of this section shall not be construed to restrict or apply to constitutionally protected communications to and from citizens and their elected representatives.

(k) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

Created by Chapter 475, §2, Public Acts of 1999, effective June 15, 1999. Amended by Chapter 15, §§2-7, Public Acts of 2003, effective July 1, 2003.

§47-18-2502. Definitions Pertaining to Commercial Electronic Mail

As used in this part [§§47-18-2501 - 47-18-2502], unless the context otherwise requires:

(1) "Computer network" means a set of related, remotely connected devices and any communications facilities, including more than one computer with the capability to transmit data among them through the communications facilities; and

(2) "Without authority" means a person using the computer network of an electronic mail service provider to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

Created by Chapter 475, §3, Public Acts of 1999, effective June 15, 1999.